

**Petes, Greg****SENATE TAXATION****EXHIBIT NO. 2****DATE 1-16-07****ROLL NO. SB-76**

**From:** Smigelski Leonard [Leonard.Smigelski@irs.gov]  
**Sent:** Friday, October 27, 2006 12:12 PM  
**To:** Petesch, Greg  
**Cc:** Schenck, Clayton; Rodriguez Barbara E; Haugh Barbara A; Adams Albert D  
**Subject:** RE:

Greg: Thank you for the supporting information regarding disclosures by the Montana Department of Revenue to the Montana Legislative Fiscal Analyst. As we discussed, the information I received regarding some proposed legislation gave me the erroneous impression that federal tax information that was disclosed by IRS to the Montana Department of Revenue would be shared outside the DOR for non-tax purposes.

As you pointed out, the information being disclosed consists of so-called "wrap-around" information; i.e., copies of federal tax schedules and/or data taken from federal returns that are attached to, or included in, a taxpayer's state tax return. These disclosures are subject to the provisions of Internal Revenue Code section 6103(p)(8). As you correctly indicated, this information can be redisclosed to state officers and employees by the DOR if the disclosures are specifically authorized by state law. The information you provided substantiates that authority.

I apologize for my apparent misinterpretation and trust that this reply will be adequate to allow the Legislative Fiscal Analyst to receive Montana DOR information, including wraparound information, consistent with statutory authority.

**Leonard Smigelski**  
 Office of Disclosure  
 Tel: 716-961-5540  
 Fax: 716-961-5070

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**From:** Petesch, Greg [mailto:gpatesch@mt.gov]  
**Sent:** Friday, October 27, 2006 1:15 PM  
**To:** Smigelski Leonard  
**Cc:** Schenck, Clayton  
**Subject:**

I am writing to seek clarification of the issue I discussed with you concerning the disclosure of Montana state income tax information by the Montana Department of Revenue to the Montana Legislative Fiscal Analyst. I am enclosing a copy of section 15-30-303, MCA, concerning disclosure and section 5-12-303, MCA, governing the manner in which the information is disclosed to the Legislative Fiscal Analyst. As we discussed, the statute only addresses the disclosure of Montana income tax information. That information includes federal "wrap-around" information. The Legislative Fiscal Analyst is not seeking any other federal return information. When the enclosed Montana statutes were drafted, they were intended to conform to 46 U.S.C. 6103(p)(B). As we discussed that section authorizes federal "wrap-around" information to be disclosed to other state agencies by the tax administering agency if the disclosure is authorized by state law and if state law provides adequate provisions to protect the confidentiality of the federal information. In addition, the Montana statutes are designed to conform to 26 C.F.R. 301.6103(p)(2)(B) concerning disclosure of federal information by the first recipient (Department of Revenue) to the second recipient (Legislative Fiscal Analyst). As we discussed, your September 27, 2006, e-mail to Brenda Gilmer was not intended as a formal opinion that would prevent the Legislative Fiscal Analyst from receiving Montana income tax information that contains federal wrap-around information. The Legislative Fiscal Analyst uses the information in preparing the revenue estimate used to ensure that appropriations by the Montana Legislature do not exceed anticipated revenue -- a balanced budget.

**5-12-303. Fiscal analysis information from state agencies.** (1) The legislative fiscal analyst may investigate and examine the costs and revenue of state government activities and may examine and obtain copies of the

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records, books, and files of any state agency, including confidential records.

(2) *When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.*

(3) *The legislative fiscal analyst may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.*

(4) Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public. In preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

(5) This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure. (emphasis added)

The emphasized language applies to copies of Montana individual income tax returns. The language in subsection (2) is designed to impose both the state and federal penalties applicable to the Department of Revenue on the Legislative Fiscal Analyst.

**15-30-303. Confidentiality of tax records.** (1) *Except as provided in subsections (7) and (8) or in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:*

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) *any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.*

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the

items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

(4) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$1,000 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer or employee of the state, the offender must be dismissed from office and may not hold any public office in this state for a period of 1 year after dismissal.

(6) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) *The department shall furnish:*

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of public health and human services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) *to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.*

(g) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

(h) to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20. (emphasis added)

This section is designed to provide the Legislative Fiscal Analyst with access to Montana income tax information that may include federal wrap-around information.

I appreciate your prompt return of my phone call and your attention to this issue.

Greg Petesch  
Director of Legal Services  
Montana Legislative Services Division